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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,458	03/15/2004	Clifford T. Schmitt	FARA-1-1002	1223

7590 10/17/2006

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EXAMINER

CHRISTENSEN, RYAN S

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

EV

Office Action Summary

Application No.

10/800,458

Applicant(s)

SCHMITT ET AL.

Examiner

Ryan Christensen

Art Unit

2856

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9-11-2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5, 17, 20, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 17, 20 is/are allowed.
- 6) ☒ Claim(s) 5 and 24 is/are rejected.
- 7) ☐ Claim(s) 25 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 5 and 24 are withdrawn in view of the newly discovered reference(s). Rejections based on the newly cited reference(s) follow.
2. Claims 17, 20 are allowed.
3. Claim 25 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2001/0035057 (Jackson et al.) in view of U.S. Patent 6,289,714 (Tartre) or U.S. Patent 6,405,135 (Adriany et al.).
7. With respect to claim 5, Jackson et al. disclose a surface penetration at a facility (well, 14, Fig. 1), inserting a monitoring station comprising a generally tubular member (12, Fig. 1) extending perpendicularly into the surface penetration (Fig. 1), and forming a seal between the monitoring station and the facility surface (16, Fig. 1 and paragraph 27). The sealant (concrete) is placed around the on the facility surface substantially around the surface penetration (Fig. 1 and paragraph 27) and the tubular member is placed extending into the surface penetration (Fig. 1).
8. Jackson et al. does not explicitly disclose a mounting plate, or the mounting plate resting on top of the sealant. However, Tartre discloses a monitoring station placed into the ground, which feature a lip or rim at the top of the generally tubular member that is considered to be a mounting plate (unlabeled, Fig. 1). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system taught by Jackson et al. with a mounting plate, as disclosed by Tartre, in order to ensure the tubular member is inserted in perpendicular manner so the filter or slits do not touch the subsurface and collect dirt which inhibits the collection of gases of interest. The mounting plate as


Art Unit: 2856

- disclosed in the combination applied above would rest on top of the seal (16, Fig. 1) disclosed by Jackson et al.
9. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the combination as applied to claim 5 above, and further in view of U.S. Patent 6,666,068 (Boyd et al.).
 10. With respect to claim 28, Tartre discloses an annular sealing member (O-Ring, 42, Fig. 1) creating a seal between cap and the tubular member.
 11. Boyd et al. disclose a monitoring port cap having a threaded exterior corresponding to and interfacing a threaded interior of the tubular member (58, Fig. 4-7, and Col. 6, lines 21-25), a sampling adapter having a threaded exterior corresponding to and interfacing a threaded interior of the tubular member (Fig. 8-10, and Col. 6, lines 25-45); threading the monitoring cap into the tubular member, unthreading the monitoring cap, and threading the sampling adaptor into the generally tubular member (Col. 6, lines 45-60).
 12. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the system taught by the combination as applied to claim 5 by providing a cap and an adapter that are interchangeably threaded into the tubular member, as disclosed by Blyd et al., in order to maintain a seal and allow periodic sampling through the adaptor and it would have been obvious to provide an O-ring, as disclosed by Tartre, because O-Rings are well known in the art for facilitating air tight seals.

Conclusion

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Christensen whose telephone number is 571-272-2683. The examiner can normally be reached on Monday - Friday, 8am - 5pm.
14. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
15. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

RC


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